IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 136 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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MIHIR TEXTILES LIMITED

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 136 of 1989

MR JP SHAH for Petitioner No. 1

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 12/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee as well as the revenue, the following questions have been referred to this court for its opinion under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

At the instance of the Assessee

1. Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the disallowance is required to be made u/s 40(c) out of the remuneration paid to the Managing Director notwithstanding the fact that he same was reasonable having regard to the business requirements of the company?

2. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that for the purposes of considering the disallowance u/s 40(c) of the perquisite in respect of the accommodation given by the assessee to its Managing Director was includible on the basis of the actual expenditure incurred and not in accordance with the I.T. Rules, 1962?

3. Whether, on the facts and circumstances of the case, the Tribunal was right in law in holding that the commission paid to the Managing Director was required to be included while computing the disallowance u/s 40(c)?

At the instance of the Revenue

1. Whether the sum of Rs. 94,500/- paid to M/s. Mettur Beardshell Ltd. was allowable as a deduction on revenue account?

2 Whether the payments on account of medical benefits to the Managing Director and personal accident insurance premium were liable to be included while calculating the disallowance u/s 40(c)/40A(5)?

2. The learned advocates have submitted that all the questions, which have been referred to this court, have been decided by this court either in the case of the assessee itself or in other cases.

3. It has been submitted that so far as the first question, which has been raised at the instance of the assessee is concerned, it has been decided in the case of the assessee itself in I.T.R. No. 93/87 against the assessee. In the circumstances, the first question referred at the instance of the assessee, is answered in the affirmative, i.e., against the assessee and in favour of the revenue.

4. So far as the second question is concerned, it has been submitted that the said question has been decided by this court in 173 ITR 179. Looking to the law laid down in the said judgment, the question referred to us is answered in the affirmative, i.e., against the assessee and in favour of the revenue.

5. So far as the third question is concerned, it has been submitted that the said question has also been decided in the case of the assessee itself in I.T.R. No. 93/87. This question is therefore decided in the affirmative, i.e., against the assessee and in favour of the revenue.

6. So far as the two questions, which have been referred to this court at the instance of the revenue are concerned, it has been submitted that both the questions have also been answered by this court.

7. So far as the first question is concerned, it has been decided in the case of the assessee itself in I.T.R. No. 93/87 in favour of the assessee and against the revenue. Following the said judgment delivered in ITR No. 93/87, we also answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

8. So far as the second question is concerned, it pertains to two expenditures, one in the nature of medical benefit which has been given to the Managing Director, and the second is with regard to the payment of personal accident insurance premium for the Managing Director.

9. So far as the amount of expenditure incurred for the purpose of medical benefit to the Managing Director of the company is concerned, it has been covered by a judgment delivered by this court in the case of Gujarat Steel Tubes Ltd. v. CIT, 210 ITR 358. Looking to the law laid down by this court in the said judgment, we decide the issue in the affirmative, i.e against the assessee and in favour of the revenue, whereas so far as

the amount of expenditure which pertains to the payment of personal accident insurance premium for the Managing Director is concerned, the same is also decided in the case of the assessee itself in ITR No. 93/87. Accordingly, we decide the said question in the negative i.e. in favour of the assessee and against the revenue.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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